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FILED
08/03/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
43B-0918-R-2023
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Anthony & Lauren Harris Eaton Trust

CASE 43B-0918-R-2023
43B 39204-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The ditch identified on the abstract for this claim in the Preliminary Decree is Mill Creek Flat Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Upland Ditch, not for Mill Creek Flat Ditch. In 2021, the Montana Department of Natural Resources and Conservation ["DNRC"] prepared a new marked aerial photograph for the Mill Creek claimants and the Court to use to determine

the correct ditch name and point of diversion legal description. On June 21, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address this error with the claimants. A copy of the new marked aerial photograph was included. On July 24, 2023 the claimants filed their response stating that the ditch historically used for these water rights is the Mill Creek Flat Ditch. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the NENENW section 3, T6S, R9E, PARK. The legal description should be the NESWNE section 3, T6S, R9E, PARK. The ditch name is already correctly appearing on the abstract as Mill Creek Flat Ditch.

CONCLUSION OF LAW

The new DNRC marked aerial photograph and response filed by the claimants are sufficient to contradict and overcome the prima facie claim as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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Note: Service List Updated 7-25-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 39204-00 STATEMENT OF CLAIM
Version: 7 -- POST DECREE
Status: ACTIVE

Owners: EATON, ANTHONY & LAUREN HARRIS TRUST
1668 EAST RIVER RD
LIVINGSTON, MT 59047

Priority Date: JUNE 1, 1891

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.75 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 120.00

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	3	6S	9E	PARK

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: MAY 1 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	55.00		E2NE	18	5S	9E	PARK
2	65.00		W2NW	17	5S	9E	PARK
Total:	120.00						

Remarks:

AUTHORIZATION TO CHANGE ISSUED 07/21/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE. NOTICE OF COMPLETION DUE 11/30/1990.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.

LEASE AUTHORIZATION TO CHANGE THE PURPOSE AND PLACE OF USE ISSUED 07/13/1995 EXPIRES 07/13/2005. SEE 43B 39204-00 BY FISH, WILDLIFE & PARKS.